

11/14/03
in main copy

November 19, 2003

(Via e-mail and regular mail)

Mr. Mark Poindexter

Branch Head, Southwest Field Operations Branch

Solid Waste Section

Division of Waste Management

North Carolina Department of Environment and Natural Resources

1628 Mail Service Center

Raleigh, North Carolina 27699-1628

Moore & Van Allen

William A. White
Attorney at Law

T 704 331 1098
F 704 378 2098
billwhite@mvalaw.com

Moore & Van Allen PLLC

Suite 4700
100 North Tryon Street
Charlotte, NC 28202-4003

Re: ReUse Technology, Inc. Hwy 301 Swift Creek Coal Combustion By-Product Structural Fill Site

Dear Mr. Poindexter:

After our telephone call this afternoon, I am writing to urge you to review the Division's correspondence file in this matter once more.

As I said earlier today, ReUse Technology, Inc. ("ReUse") believes that the Division amended its April 4, 2002 Notice of Violation ("NOV") in its letter to ReUse dated August 19, 2002, and that ReUse has performed all of the work required by the NOV, as so amended.

It is simply not appropriate to issue ReUse a compliance order to install a monitoring well as if it has not complied with this NOV requirement. ReUse did comply with the NOV. If the Section believes that ReUse should be required to install a monitoring well, it should justify that decision based on its review and analysis of the data which ReUse has now submitted.

As the correspondence between the parties indicates, ReUse objected to a number of the matters set forth in the original NOV in a letter to the Division dated April 19. ReUse Submitted plans for rerouting surface drainage on May 7. ReUse met with the Division Director and Section members, and on May 22 submitted a proposal to satisfy Condition C of the original NOV ("Install a ground water monitoring well on the south side of the concrete pipe") by performing an engineering investigation to depict the relative locations of the structural fill cover material; the coal ash; the drainage pipe; any pipe backfill material; the undisturbed ground surface; and the groundwater level.

Mr. Coffey wrote ReUse for the Solid Waste Section on June 20, 2002. He approved ReUse's May 7 plans for rerouting drainage. He approved ReUse's methodology for identifying the construction and placement of the pipe, adding the requirement to delineate an additional area.

While Mr. Coffey indicated the Section believed that installation of a shallow well seemed protective and practical, he indicated a future determination would be made about the course of action to be taken at the site once the work discussed in the letter was performed and reviewed by the Section.

Durham, NC
Charleston, SC

Mr. Mark Poindexter
November 13, 2003

The Section's August 19, 2002 letter to ReUse confirmed Mr. Coffey's decision on this question. It responded to further submittals from ReUse responding to comments from the Division on surface water diversion. It approved the plan for the study to confirm the ditch/pipe locations (submitted by ReUse to satisfy Condition C). It directed ReUse to implement it. The letter then set forth Sections A and B of the original NOV. It did not repeat Section C.

ReUse has now performed all of the work approved and directed in the August 19, 2002 letter, and submitted and recorded the deed and plat with the language specified in that letter. Accordingly, there is no ReUse failure to perform work that it has been ordered to do. To repeat, issuing ReUse an order based on a failure to comply would not be appropriate.

Very truly yours,

Moore & Van Allen PLLC

A handwritten signature in dark ink, appearing to read 'William A. White', with a long horizontal flourish extending to the right.

William A. White

cc: Robert J. Waldrop